

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

NO. 4:13CR0068-05-JLH

NO. 4:16CV00366-JLH

DERRICK ANTHONY RHODES

DEFENDANT

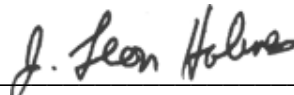
**ORDER**

Derrick Anthony Rhodes has filed a *pro se* motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255, based on *Johnson v. United States*, 135 S. Ct. 2551 (2015), and a motion to appoint counsel.

Defendant was not sentenced based on the “residual clause” of Armed Career Criminal Act that was held unconstitutional in *Johnson*. Rather, he was sentenced as a career offender under the Guidelines based on prior convictions for battery, stalking and a qualifying drug offense.

Accordingly, the motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255 and motion to appoint counsel are denied. Documents #398 and #396. No certificate of appealability will be issued.

IT IS SO ORDERED this 15th day of June, 2016.

  
UNITED STATES DISTRICT JUDGE